

1507 - 21st Street, Suite 330  
Sacramento, California 95811  
Telephone: (916) 445-1888  
Contact Person: Holly Victor  
[www.nmvb.ca.gov](http://www.nmvb.ca.gov)

STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD  
**MINUTES**

The New Motor Vehicle Board ("Board") held a General meeting on January 18, 2017, in Hearing Room #1, at the Board's offices.

2. **ROLL CALL**

Glenn Stevens, President and Public Member, called the meeting of the Board to order at 10:30 a.m.

Present:	Ramon Alvarez C. Anthony A. Batarse Jr. Kathryn Ellen Doi Rahim Hassanally David C. Lizárraga Glenn E. Stevens	William G. Brennan, Executive Director Robin P. Parker, Senior Staff Counsel Danielle R. Vare, Staff Counsel
----------	---	--

Absent: Ryan L. Brooks  
Bismarck Obando  
Victoria Rusnak

3. **PLEDGE OF ALLEGIANCE**

Mr. Brennan led the members and staff in the Pledge of Allegiance.

Mr. Brennan acknowledged the arrival of Evelyn Matteucci, an Administrative Law Judge candidate.

4. **APPROVAL OF THE MINUTES FROM THE SEPTEMBER 13, 2016, GENERAL MEETING**

Ms. Doi moved to adopt the June 28, 2016, General Meeting minutes, and June 28, 2016, Special Meeting minutes. Mr. Lizárraga seconded the motion. The motion carried unanimously.

5. **CONSIDERATION OF PEREMPTORY WRIT OF MANDAMUS IN CAPACITY OF TEXAS, INC. V. NEW MOTOR VEHICLE BOARD; GUARANTEED (SIC) FORKLIFT, INC., DBA GFL, INC. (REAL PARTY IN INTEREST), SACRAMENTO COUNTY SUPERIOR COURT, CASE NO. 34-2014-80001848-CU-WM-GDS**

GUARANTEE FORK LIFT, INC., dba GFL, INC. v. CAPACITY OF TEXAS, INC.  
Protest No. PR-2361-13

Consideration of the Sacramento County Superior Court's Peremptory Writ of Mandamus wherein the Court commanded the Board to set aside its April 10, 2014 Decision in Protest No. PR-2361-13, and remanded the matter to the Board to issue a new decision overruling Guarantee Forklift, Inc., dba GFL, Inc.'s protest thereby allowing the termination of its Capacity of Texas franchise in the above-referenced matter, by the Public Members of the Board.

Mr. Stevens indicated that this item involves a dispute between a franchisee and a franchisor therefore the Dealer Members "may not participate in, hear, comment, advise other members upon, or decide" Agenda item 5.

Mr. Stevens read the following statement:

By way of background, Capacity of Texas sought to terminate GFL's Capacity franchise because it contends that GFL materially breached its obligations to Capacity under the franchise, and the terms and conditions accepted by the user of the online parts ordering system, by providing the access password to the online parts ordering system to a former employee. GFL argued that it did not breach any terms of its franchise with Capacity.

A merits hearing was held before Administrative Law Judge Kymberly Pipkin on December 11, 2013. At the April 9, 2014, Special Meeting, the Proposed Decision sustaining the protest was adopted by the Public Members by a 2-to-1 vote with one dissent.

On May 28, 2014, Capacity of Texas filed a Petition for Writ of Administrative Mandamus in the Sacramento County Superior Court. The Board did not participate in this writ via the Attorney General's Office. Capacity argued that the August 13, 2013, Order issued by ALJ Skrocki denying Capacity's motion to dismiss constituted an error of law. It further argue that the Board in sanctioning the Order Denying Capacity's Motion to Dismiss...and adopting the Proposed Decision of ALJ Pipkin by majority vote, has proceeded in excess of its jurisdiction and had committed several substantial errors of law. Lastly, Capacity maintained that the Board, in adopting the Proposed Decision, committed prejudicial abuse of discretion in that the Board's Decision is not supported by the findings, and the findings are not supported by substantial evidence.

After oral arguments and supplemental briefs were submitted, the Court issued a ruling that the Board did not abuse its discretion in denying Capacity's motion to dismiss. The Court determined that ALJ Skrocki's Order denying Capacity's Motion to Dismiss was well-reasoned and well-supported. The Court adopted these findings and conclusions as its own. However, the Court found that the Board did abuse its discretion in concluding that Capacity lacked good cause to terminate GFL's franchise. The Petition for Writ of Administrative Mandamus was granted and the court issued a Peremptory Writ of Mandate compelling the Board to set aside its decision and issue a new decision overruling the protest and allowing termination of the franchise.

GFL and the Board filed Appeals on November 2015. GFL did not file its opening brief and did not request an extension of time so on August 17, 2016, the Court dismissed its appeal. In light of this, the Board dismissed its appeal on August 19, 2016. Remittitur was issued on October 18, 2016. The Decision granting the writ is final.

Only the Public Members participated in this matter. Ms. Doi moved to set aside the Board's April 10, 2014, Decision. Mr. Lizárraga seconded the motion. The motion carried unanimously.

6. **ORAL PRESENTATION BEFORE THE PUBLIC MEMBERS OF THE BOARD**

GUARANTEE FORK LIFT, INC., dba GFL, INC. v. CAPACITY OF TEXAS, INC.  
Protest No. PR-2361-13

Mr. Stevens indicated that Agenda Items 6 and 7 involve a dispute between a franchisee and a franchisor so the Dealer Members may not "may not participate in, hear, comment, advise other members upon, or decide" these matters.

Mr. Stevens read the following statement "comments by the parties or by their counsel that are made regarding any proposed decision, ruling, or order must be limited to matters contained within the administrative record of the proceedings. No other information or argument will be considered by the Board." Furthermore, he indicated that since this is an adjudicative matter as described in Government Code section 11125.7(e), therefore members of the public may not comment on such matters.

In compliance with the Peremptory Writ of Mandate, the Board considered a new decision overruling the protest that permits Capacity of Texas to terminate the franchise of Guarantee Fork Lift, Inc., dba GFL, Inc.

Denise Kendrick appeared on behalf of Protestant. Tim Brownlee, Esq. of Wait, Brownlee, Berger & Dewoskin represented Respondent.

Mr. Stevens informed the parties that although the Board generally has a court reporter

transcribe its meetings, the court reporter called in sick and the Board was unable to get one at the very last minute. The meeting was audio recorded and then transcribed. Mr. Stevens asked if either party had any objections. No objections were raised.

7. **CLOSED EXECUTIVE SESSION DELIBERATIONS**

Pursuant to Government Code section 11126(c)(3), Vehicle Code section 3008(a), and Title 13, California Code of Regulations, sections 581 and 588, the Board convenes in closed Executive Session to deliberate the decisions reached upon the evidence introduced in proceedings that were conducted in accordance with Chapter 5 (commencing with section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

**CONSIDERATION OF DECISION**

GUARANTEE FORK LIFT, INC., dba GFL, INC. v. CAPACITY OF TEXAS, INC.  
Protest No. PR-2361-13

Consideration of the Board's Decision in light of the Sacramento County Superior Court's Judgment on Writ of Mandamus, by the Public Members of the Board.

The Public Members of the Board deliberated in closed Executive Session. Mr. Stevens moved to adopt the Decision overruling the protest, which allowed Capacity of Texas to terminate the franchise of Guarantee Forklift, Inc. dba GFL, Inc. Mr. Lizárraga seconded the motion. The motion carried unanimously.

8. **OPEN SESSION**

The Public Members returned to Open Session. Ms. Parker announced the decision in *Guarantee Forklift, Inc., dba GFL, Inc.*

On behalf of the Public Members, Ms. Doi read the following statement: "The Board encourages Capacity to consider the change of circumstances. Although the Board lacks the authority to direct Capacity to take any particular course of action and is authorizing Capacity to terminate the franchise, Capacity does not have to do so. The Board encourages Capacity to consider the comments made by the franchisee here today in determining its next course of action."

9. **REPORT ON THE NATIONAL ASSOCIATION OF MOTOR VEHICLE BOARDS AND COMMISSIONS (NAMVBC) FALL CONFERENCE BY BILL BRENNAN, EXECUTIVE DIRECTOR, NEW MOTOR VEHICLE BOARD AND NAMVBC PRESIDENT - BOARD DEVELOPMENT COMMITTEE**

The members were provided with a memorandum from Bill Brennan concerning the NAMVBC Fall Conference. Mr. Brennan reported that attendance at the NAMVBC meetings has steadily increased and the agendas have been strong. Mr. Brennan reported

that the attorneys involved in the New York Court of Appeals case, *Beck Chevrolet Co., Inc. v. General Motors LLC*, discussed their strategies, the outcome of the case, and the impact on the industry. The experts in the case, Urban Science Applications and The Fontana Group, also made presentations. Mr. Brennan encouraged both the public and dealer members to attend future meetings. The next meeting is in Alexandria, Virginia in September. An additional topic of interest was presented by Glenn Mercer on the dealership of tomorrow. Autonomous vehicles from the perspective of related and unrelated industries, was also discussed. The impact on local revenues and revenue sources, parking, ticketing, collision and repair industries, and insurance industries was addressed.

Mr. Alvarez would like an autonomous vehicle presentation at the upcoming Industry Roundtable.

10. **2017 ELECTION OF BOARD PRESIDENT AND VICE PRESIDENT - EXECUTIVE COMMITTEE**

Ms. Doi moved to nominate Mr. Alvarez as President. Mr. Lizárraga seconded the motion to nominate Mr. Alvarez as President. Mr. Stevens moved to close the nominations, with Mr. Lizárraga seconding the motion. This motion to close the nominations carried unanimously. The motion to nominate Mr. Alvarez as President carried unanimously.

Mr. Alvarez moved to nominate Ms. Doi as Vice President. Mr. Lizárraga seconded the motion to nominate Ms. Doi as Vice President. Mr. Stevens moved to close the nominations, with Mr. Alvarez seconding the motion. This motion to close the nominations carried unanimously. The motion to nominate Ms. Doi as Vice President carried unanimously.

11. **APPOINTMENT OF COMMITTEE MEMBERS TO THE ADMINISTRATION COMMITTEE, BOARD DEVELOPMENT COMMITTEE, FISCAL COMMITTEE, GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE, AND POLICY AND PROCEDURE COMMITTEE BY THE INCOMING BOARD PRESIDENT**

After a brief discussion off the record, incoming President Alvarez made the following committee appointments:

- **ADMINISTRATION COMMITTEE**  
Bismarck Obando, Chair  
Rahim Hassanally, Member
- **BOARD DEVELOPMENT COMMITTEE**  
David C. Lizárraga, Chair  
Ryan Brooks, Member

- EXECUTIVE COMMITTEE  
Ramon Alvarez C., President  
Kathryn Ellen Doi, Vice President
- FISCAL COMMITTEE  
Victoria Rusnak, Chair  
Anthony A. Batarse, Jr., Member
- GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE  
Glenn E. Stevens, Chair  
Ramon Alvarez C., Member
- POLICY AND PROCEDURE COMMITTEE  
Rahim Hassanally, Chair  
Kathryn Ellen Doi, Member

12. **APPOINTMENT OF BOARD MEMBER DESIGNEE IN COMPLIANCE WITH THE BOARD'S 1997 "REVISED BOARD POLICY REGARDING REPRESENTATION IN COURT ACTIONS" BY THE INCOMING BOARD PRESIDENT**

This matter was pulled from the agenda since the incoming President is a Dealer Member and the incoming Vice President is a Public Member. If both the incoming President and Vice President were Dealer Members this designation would be necessary to comply with the Board adopted policy.

13. **REVIEW AND CONSIDERATION OF BOARD DELEGATIONS IN COMPLIANCE WITH THE 1996 PERFORMANCE AUDIT CONDUCTED BY BUSINESS, TRANSPORTATION & HOUSING AGENCY - EXECUTIVE COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Robin Parker updating the Board delegations that were originally adopted in 1997 in compliance with the 1996 Performance Audit conducted by Business, Transportation & Housing Agency. Ms. Parker reported effective January 1, 2017, Vehicle Code section 3065 was amended to require the warranty reimbursement schedule or formula be reasonable with respect to the time and compensation allowed to the franchisee for the warranty diagnostics, repair, servicing, and all other conditions of the obligation which now includes costs directly associated with the disposal of hazardous materials that are associated with a recall repair.

Mr. Alvarez moved to adopt the Board delegations. Mr. Hassanally seconded the motion. The motion carried unanimously.

14. **ANNUAL UPDATE ON CONSUMER MEDIATION PROGRAM AND DISCUSSION REGARDING THE BOARD'S LANGUAGE SURVEY - ADMINISTRATION COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Jackie Grassinger

concerning the annual update on the Board Consumer Mediation Program. As indicated in the memo the program received a total of 498 cases and handled 687 telephone calls during fiscal year 2015-2016. Ms. Grassinger reported that of the 498 cases received, 343 were mediated; 69% were completely mediated. Additionally, of those 343 cases, 126 were dealer cases and 217 were manufacturer cases. Lastly, Ms. Grassinger updated the members on the results of the language survey. Out of 657 calls since January 1, 2016, 34 requested a Spanish interpreter, and an interpreter was requested once for Mandarin, Korean, and Punjabi. In March 2016 the Board added the Google Translate feature to the Mediation portion of its website. Statistics for how many people are using that feature are pending.

15. **CONSIDERATION OF THE REVISED GUIDE TO THE NEW MOTOR VEHICLE BOARD TO INCLUDE INFORMATION ON STATUTORY AND REGULATORY CHANGES - ADMINISTRATION COMMITTEE**

The members were provided with a memorandum and revised *Guide to the New Motor Vehicle Board* from Bill Brennan and Robin Parker. Ms. Parker reported that the Guide was thoroughly reviewed. As indicated in the memo, the pertinent changes are:

- A footnote was added to the Jurisdiction section on page 2 to reflect that subdivision (e) of Section 3050 was relettered to subdivision (f) effective January 1, 2016.
- The section “New as of 2017” on page 3 has been updated to reflect recent legislation impacting the Board and regulations promulgated by the Board.
- A footnote was added in the section entitled “Franchisor’s Notice of Additional or Relocated Franchise” on page 20 because the “notice to dealer” language in Section 3072(a) contains commas that are not in Section 3062(a).
- The Consumer Automotive Recall Safety Act, sponsored by the California New Car Dealers Association, amended Vehicle Code section 3065 (Assembly Bill 287; Stats. 2016, Ch. 682), as reflected on page 31. For Article 4 protests (cars, motorcycles, ATVs), franchisors are required to adequately and fairly compensate each of its franchisees for labor and parts used to provide warranty diagnostics, repair, servicing, and all other conditions of the obligation, including costs directly associated with the disposal of hazardous materials that are associated with a recall repair.

Mr. Batarse moved to adopt the revised *Guide to the New Motor Vehicle Board*. Mr. Lizárraga seconded the motion. The motion carried unanimously.

16. **STATUS REPORT CONCERNING MANUFACTURER AND DISTRIBUTOR COMPLIANCE WITH VEHICLE CODE SECTIONS 3064/3074 AND 3065/3075 (THE FILING OF STATUTORILY REQUIRED SCHEDULES AND FORMULAS) - ADMINISTRATION COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Danielle Vare updating manufacturer and distributor compliance with the Board's request that statutorily mandated schedules or formulas be filed with the Board. Ms. Vare reported that 32 manufacturers/distributors that fall within the Board's jurisdiction who are required to file mandated schedules and formulas did, so there is 100% compliance.

17. **BOARD FINANCIAL CONDITION REPORT FOR THE PREVIOUS FISCAL YEAR - FISCAL COMMITTEE**

The members were provided with a memorandum from Bill Brennan, Dawn Kindel and Suzanne Luke concerning the Board's financial condition for fiscal year 2015-2016. Ms. Luke reported that the Board expended 79% of its appropriated budget and the current reserve balance is \$1.5 million. Mr. Brennan indicated that the Board's reserves are good and nothing should be done in the event the industry declines. Mr. Alvarez inquired about using the reserve for travel to NADA and NAMVBC. Mr. Brennan indicated that travel is restricted by the Governor and all out-of-state travel requests are being declined; they need to be "Mission critical" and education doesn't qualify. Mr. Brennan highlighted that dealer fees of \$817,000 and manufacturer fees of \$969,000 were collected.

18. **STATUS REPORT CONCERNING THE BOARD'S FINANCIAL CONDITION FOR THE 1<sup>ST</sup> QUARTER OF FISCAL YEAR 2016-2017 AND STATUS ON THE BOARD'S COLLECTION OF ITS ANNUAL FEES - FISCAL COMMITTEE**

The members were provided with a memorandum from Bill Brennan, Dawn Kindel and Suzanne Luke concerning the Board's financial condition for the 1<sup>st</sup> quarter of fiscal year 2016-2017 and the status of the Board's collection of its annual fee. Ms. Luke indicated that the current reserve balance is \$2.44 million. In addition, the Board's annual manufacturer/distributor fee collection which began in August of this year is nearly completed. The Board invoiced 161 manufacturers, and only one payment is outstanding. When the last payment is received, a total of \$1,088,000 will be collected.

19. **CONSIDERATION OF OUT-OF-STATE TRAVEL PLANS FOR FISCAL YEAR 2017-2018 - FISCAL COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Dawn Kindel concerning the out-of-state travel plans for fiscal year 2017-2018.

Miss Kindel indicated that the Board staff is prepared to submit travel proposals for six trips in fiscal year 2017-2018 as follows:

- Two trip requests are for the Executive Director and one Board member to attend the National Association of Motor Vehicle Boards and Commissions Fall Workshop. This workshop will be held September 6-9, 2017, in Alexandria, Virginia.
- Two trip requests are for the Executive Director and one Board member to attend the Recreational Vehicle Industry Association's 55<sup>th</sup> National Trade Show which will



take place in Louisville, Kentucky in early December 2017.

- Two trip requests are for the Executive Director and one Board member to attend the National Automobile Dealers Association Convention and Expo. The convention will be held March 22-25, 2018, in Las Vegas, Nevada.

As indicated in the memo, if all six trips are taken, staff estimates the expense will be approximately \$9,600. Staff will submit the requests to the Department of Motor Vehicles, the California State Transportation Agency, the Department of Finance and the Governor's office for final approval. Once final administration approval is received, the Executive Committee will authorize which individuals will actually attend.

Ms. Doi moved to approve the six out-of-state trips requested. Mr. Alvarez seconded the motion. The motion carried unanimously.

## 20. **DISCUSSION AND CONSIDERATION OF THE UPCOMING INDUSTRY ROUNDTABLE - GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Danielle Vare concerning the May 4, 2017, Industry Roundtable. Ms. Vare reported that the list of potential topics has been narrowed to include those that are most relevant and provide a broad range of information regarding the current state of the automotive industry. The staff is also soliciting input from various dealer, manufacturer and public interest groups for other potential presentations. As indicated in the memo, the potential topics are:

- Car-sharing's rise: Auto manufacturers beginning their own car-sharing programs
  - Autonomous Vehicle Taxis being implemented in Singapore
  - Autonomous Uber in San Francisco
- Car dealerships' contribution to national and state economies (Center for Automotive Research report)
- Status of recall issues:
  - Used car recall repairs
  - How is current legislation going to streamline process?
- Investigative Reports
  - Are there any other relevant investigative reports affecting the automotive industry?
- Case management statistics
- Legislative update:
  - AB 287 Recall bill
- CNCDA v. Truecar lawsuit
- CNCDA request to DMV for Tesla investigation regarding unlicensed sales locale at Nordstrom
- Panel Discussion on warranty claims/franchisor incentive post SB 155
- Right of First Refusal
- Dealership Loaner Programs
- Electric/Alternative Fuel Vehicles

- Autonomous Vehicles and their Regulation

21. **CONSIDERATION OF REVISIONS TO THE INFORMATIONAL GUIDE FOR MANUFACTURERS AND DISTRIBUTORS, WHICH OUTLINES THEIR OBLIGATIONS TO PROVIDE NOTICES, SCHEDULES, AND FORMULAS MANDATED BY THE CALIFORNIA VEHICLE CODE AND CIVIL CODE TO THE NEW MOTOR VEHICLE BOARD AND/OR IMPACTED DEALERS - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum and revised *Informational Guide for Manufacturers and Distributors* from Bill Brennan and Robin Parker. As indicated in the memo, the pertinent changes are:

- A footnote was added to the requirements for the “notice to dealer” language in an establishment or relocation (page 6) and off-site sale (page 8) because the “notice to dealer” language in Section 3072(a) contains commas that are not in Section 3062(a).
- DMV revised the OL 124 Form (Certificate of Proposed Franchise) based on suggestions from Board staff, which are on pages 8-10 and 12. The second box on the OL 124 form was amended to reflect a situation in which a manufacturer or distributor has franchised dealers of the same line-make within the relevant market area and notice has been given but the protest(s) filed were resolved, i.e., dismissed or the Board issued a Decision overruling the protest. Previously, this scenario was not on the form.
- The Consumer Automotive Recall Safety Act, sponsored by the California New Car Dealers Association, amended Vehicle Code section 3065 (Assembly Bill 287; Stats. 2016, Ch. 682), as reflected on pages 13-14. For Article 4 protests (cars, motorcycles, ATVs), franchisors are required to adequately and fairly compensate each of its franchisees for labor and parts used to provide warranty diagnostics, repair, servicing, and all other conditions of the obligation, including costs directly associated with the disposal of hazardous materials that are associated with a recall repair.
- A footnote was added to the Sample Establishment or Relocation Notice (page 21) and the Sample Off-Site Sale Notice (page 23) because the “notice to dealer” language in Section 3072(a) contains commas that are not in Section 3062(a).

Mr. Alvarez moved to adopt the revised *Informational Guide for Manufacturers and Distributors*. Mr. Stevens seconded the motion. The motion carried unanimously.

22. **CONSIDERATION OF THE EXPORT OR SALE-FOR-RESALE PROHIBITION POLICY PROTEST GUIDE (VEHICLE CODE SECTION 3085, ET SEQ.) - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum and *Export or Sale-for-Resale Prohibition Policy Protest Guide*. Ms. Parker reported that there were no changes from the 2016 version of the *Guide*. Ms. Doi moved to adopt the 2017 *Export or Sale-for-Resale Prohibition Policy Protest Guide*. Mr. Lizárraga seconded the motion. Mr. Alvarez abstained from voting because he is a Jaguar dealer. The motion carried unanimously.

23. **ANNUAL REPORT CONCERNING BOARD ADOPTED POLICIES - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Robin Parker concerning the annual review of Board adopted policies. The new policies that were approved in 2016 pertain to:

- The adjusted annual gift limit was increased from \$460 to \$470 from January 1, 2017, through December 31, 2018.
- Marilyn Wong was designated the Mandatory Settlement Conference ALJ and will preside over all settlement conferences for an interim period of six months while the Board attempts to hire additional ALJs.
- The adoption of updated publications including the new *Export or Sale-for-Resale Prohibition Policy Protest Guide*.
- The Board adopted delegations were revised to reflect changes made to separate provisions pertaining to Article 5 RV protests from Article 4 vehicle protests, and Article 6 was added to allow an association to file an export or sale-for-resale prohibition policy protest on behalf of two or more impacted.

24. **DISCUSSION AND CONSIDERATION OF AN EXTENSION OF TIME FOR ADMINISTRATIVE LAW JUDGE WONG TO PRESIDE OVER ALL MANDATORY SETTLEMENT CONFERENCES - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Robin Parker regarding an extension of time for Administrative Law Judge Marilyn Wong to preside over all mandatory settlement conferences so the Board can hire and train additional ALJs. Ms. Parker reported that ALJ Wong was doing an excellent job settling protests, which left the other ALJs to preside over the merits hearings. Mr. Lizárraga moved to extend ALJ Wong's appointment as the designated Mandatory Settlement Conference ALJ for an additional of six months. Mr. Stevens seconded the motion. The motion carried unanimously.

Mr. Brennan acknowledged the arrival of Dwight Nelsen, an Administrative Law Judge candidate.

25. **ANNUAL REPORT ON THE ASSIGNMENT OF CASES TO BOARD ADMINISTRATIVE LAW JUDGES - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Danielle Vare concerning the assignment of cases to Board ALJs in 2016. As indicated in the memo, there were:

Hearing Type	2016 Total
Law and Motion	5
Discovery	6
Mandatory Settlement Conference	8
Merit Hearings	3
Merit Hearing Days	20

Ms. Vare reported that one of the merits hearings was telephonic and two were in-person hearings.

26. **DISCUSSION CONCERNING ASSEMBLY BILL 287(EFFECTIVE JANUARY 1, 2017) - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum from Bill Brennan, Robin Parker, and Danielle Vare concerning Assembly Bill 287. Ms. Vare reported that Vehicle Code section 3065 was amended to include recall repairs. At Mr. Alvarez' request Ms. Vare described the bill to the members. Additionally, she reported that the staff completed all of the programmatic tasks except for the article in the *In-Site* and the revised *Administrative Law Judges' Benchbook*, which are both in progress.

27. **EXECUTIVE DIRECTOR'S REPORT**

- A. Administrative Matters.
- B. Case Management.
- C. Judicial Review.
- D. Notices Filed Pursuant to Vehicle Code sections 3060/3070 and 3062/3072.
- E. Other.

Mr. Brennan provided the members with a report on Administrative Matters that identified all pending projects, the Board staff and committee assigned, estimated completion dates, and status. Mr. Brennan indicated that the CNCDA Dealer Day luncheon is March 15 and the Board meeting is immediately after at 2:30 p.m. Additionally, Mr. Brennan noted that the Board doesn't have any rulemaking planned for 2017 so it isn't submitting a Rulemaking Calendar. He reminded the members to submit their Statement of Economic Interest forms (Form 700) electronically this year.

Ms. Parker reported that for 2016, there were 29 protests filed. Of those, 11 were termination, and the Board only received 22 notices of termination. This is down

considerably from 2010 and 2011. So far this year, four protests have been filed. Lastly, in *West Covina Nissan*, the initial motion to dismiss was denied and Nissan filed a subsequent motion to dismiss that will be heard by ALJ Ryerson on February 27. With regards to court cases most of them are winding down. A writ was filed by *Hooman Chrysler Jeep Dodge Ram* with a May hearing date. (This writ was dismissed after the Board meeting.) In *Adrenaline Powersports*, a dismissal is pending because the dealer is closed. In *Toyota Motor Sales v. California New Motor Vehicle Board; Putnam Motors, Inc., dba Putnam Lexus*, a hearing is set for March but the parties are working on a universal settlement so it will likely be continued. (It was subsequently continued to August 4, 2017.) In *Mega RV Corp., a California corporation doing business as McMahon's RV v. New Motor Vehicle Board, State of California; Roadtrek Motorhomes, Inc.*, the Appellate Court remanded the modification protests to the Board and staff is waiting for a signed judgment on the writ.

Ms. Vare reported that three of the new protests filed are FCA modification protests, and one is a termination protest for a total of 31 open protests.

28. **ANNUAL REPORT ON STAFF PARTICIPATION IN THE OUR PROMISE CAMPAIGN FORMERLY THE CALIFORNIA STATE EMPLOYEES CHARITABLE CAMPAIGN (CSECC)**

The members were provided with a memorandum from Bill Brennan, Holly Victor, and Makalla Turner regarding staff participation in the Our Promise Campaign. Ms. Victor indicated that the Board raised a total of \$2,007 for the 2016 campaign through generous donations made by Board Members, Administrative Law Judges and staff, and through fundraising events such as raffles.

29. **SELECTION OF BOARD MEETING DATES FOR 2017**

The members were provided with a memorandum from Bill Brennan concerning Board meeting dates for 2017. The members went off the record for this discussion. Mr. Stevens indicated that meetings had been set as follows:

- March 15, 2017, in Sacramento (General Meeting);
- May 18, 2017, in Sacramento (Special Meeting);
- June 27, 2017, in Riverside (General Meeting); and,
- September 19, 2017, in Sacramento (General Meeting);

30. **PUBLIC COMMENT (Gov. Code § 11125.7)**

No additional public comment was presented.

31. **CLOSED EXECUTIVE SESSION**

Pursuant to Government Code section 11126(a)(1), all members of the Board shall convene in a closed Executive Session.

a. **ORAL INTERVIEWS OF THE ADMINISTRATIVE LAW JUDGE CANDIDATES, BY ALL MEMBERS OF THE BOARD - ADMINISTRATION COMMITTEE**

The Public and Dealer members of the Board conducted oral interviews of the Administrative Law Judge candidates.

b. **CONSIDERATION OF THE ADMINISTRATIVE LAW JUDGE NOMINEES, BY ALL MEMBERS OF THE BOARD - ADMINISTRATION COMMITTEE**

The Public and Dealer members of the Board considered the administrative law judge nominees. Mr. Stevens moved to offer positions to both candidates conditionally upon the completion of a background check. Mr. Alvarez seconded the motion. The motion carried unanimously.

c. **CONSIDERATION OF ANNUAL PERFORMANCE REVIEW FOR EXECUTIVE DIRECTOR - EXECUTIVE COMMITTEE**

The Public and Dealer members of the Board conducted the annual performance review for the Executive Director.

32. **OPEN SESSION**

The members of the Board returned to open session. Mr. Stevens announced the Decision in Agenda item 31(b).

33. **CONSIDERATION OF WHETHER TO REQUEST THE DEPARTMENT OF MOTOR VEHICLES TO WITHHOLD THE RENEWAL AND/OR SUSPEND THE EXISTING OCCUPATIONAL LICENSE FOR TAXA INC. DBA CRICKET TRAILER FOR FAILURE TO PAY THE ANNUAL BOARD FEE (13 CCR § 553) - ADMINISTRATION COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Robin Parker concerning whether to request the Department of Motor Vehicles ("DMV") to withhold renewal and/or suspend the existing occupational license of Taxa Inc. dba Cricket Trailer ("Taxa") for failure to pay the Annual Board Fee. As indicated in the memo, the Board staff has collected the assessed fees from 160 manufacturers and distributors. Ms. Parker reported that Taxa was the only licensee that failed to pay after several written invoices and contact via telephone. Ms. Grassinger spoke to the owner or president a week before the meeting who indicated that a check was in the mail; tracking information was provided. However, the check did not arrive prior to the meeting so Ms. Parker suggested that the Board consider the matter today and if the check comes in a week or so then the Board won't go forward with Mr. Lizárraga any action.

Ms. Doi moved to request the DMV to withhold renewal and/or suspend the occupational license for Taxa Inc. in the event a check is not received within a week from today. Mr.

Stevens seconded the motion. The motion carried unanimously. (A check was received after the Board meeting so no action was taken by the Board.)

The members discussed providing a resolution to Michael Flanagan since he is retiring. This will be agendized for the March meeting and presented at a subsequent meeting or mailed to Mr. Flanagan.

34. **Adjournment**

With no further business to discuss, the meeting was adjourned at approximately 1:09 p.m.

Submitted by

---

WILLIAM G. BRENNAN  
Executive Director

APPROVED: \_\_\_\_\_  
Ramon Alvarez C.  
President  
New Motor Vehicle Board